

## Requiring written, oral permission for police to conduct consent searches

SB 1195 by Hinojosa (Dutton)

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**DIGEST:** SB 1195 would have prohibited peace officers who stopped motor vehicles for alleged traffic law violations from searching the vehicle unless the officer:

- had probable cause or another legal basis for the search;
- conducted a search for weapons based on an articulation of a reasonable fear for the officers safety or the safety of others;
- obtained the written consent of the vehicle's operator on a form that complied with provisions of the bill; or
- obtained the oral consent of the vehicle's operator and ensured that the oral consent was recorded in compliance with the bill.

DPS would have had to establish requirements for the written consent form and for the audio and video recordings, for which SB 1195 would have established minimum requirements. The written form and the recording would have had to include a statement that the driver understood that the driver could refuse to give consent and a statement that the driver voluntarily gave consent to search the vehicle.

### GOVERNOR'S REASON FOR VETO:

“Senate Bill No. 1195 would require law enforcement officers, in certain traffic stop situations, to get a signed or video or audio taped consent before searching a vehicle.

“A limited number of jurisdictions in Texas already require their officers to get a signed or recorded consent before searching a vehicle, and there is nothing in current law that prohibits other entities from adopting policies that require their officers to receive written consent prior to conducting searches.

“I believe we already have sufficient protections in our Constitution and case law that protect Texans against unreasonable searches. Furthermore, there is insufficient information available at this time to determine whether signed or taped consent requirements place too onerous a burden on law enforcement or provide additional protections to the public. I would expect members of the legislature to review this issue during the interim and to bring back their findings to the 80th legislative session.”

**RESPONSE:** Sen. Juan Hinojosa, the bill’s author, said: “It is unfortunate that a small number of law enforcement officers, and their leadership in Austin, misrepresented the facts of a bill that would have been good public policy, enhanced law enforcement, and protected the safety of the public. This problem will not go away as long as that small group of law enforcement continues to abuse the power delegated to them by the citizens of Texas.”



Rep. Harold Dutton, the House sponsor, said, “SB 1195 was an attempt to eliminate the uncertainty about whether a police officer has expressed consent to search a vehicle. Eliminating this uncertainty was beneficial to law enforcement and SB 1195 accomplished that purpose.”

NOTES: SB 1195 was analyzed in Part One of the May 24 *Daily Floor Report*.